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## The New Direction of the National Labor Relations Board

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Section 7 of the National Labor Relations Act (“NLRA”) permits employees “to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection...” The NLRA is governed by the National Labor Relations Board (“NLRB”). The General Counsel of the National Labor Relations Board sets policy objectives, regarding the NLRA by issuing memoranda.

Section 7 of the NLRA applies to most private sector employees, meaning the rights outlined in this section generally apply to all non-supervisory employees within a covered company, regardless of whether they are unionized or not. A “covered company” under the NLRA includes private sector employers engaged in interstate commerce (with few exceptions).

The NLRA does not apply to supervisors. The term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Activity is considered “concerted” if employees are engaged in conduct with or on the authority of other employees and not solely by and on behalf of the employee himself. It includes circumstances where a single employee seeks to initiate, induce, or prepare for group action, as well as where an employee brings a group complaint to the attention of management. Activity is “protected” if it concerns employees’ interests as employees. An employee engaged in otherwise protected, concerted activity may lose the Act’s protection through misconduct.

The new direction of the NLRB appears to be a very narrow reading of the NLRA to the benefit of employers. After being General Counsel for just eleven days, William B. Cowan issued memorandum 25-05 (February 14, 2025 rescission memo). This memo rescinded or revised more than a dozen of his predecessor’s initiatives, including memos that:

- deemed employer surveillance and automated management practices questionable;
- found that most non-compete agreements violate the NLRA; and
- found that confidentiality and non-disparagement provisions in separation agreements violate the NLRA.

**TAKEAWAY:** Section 7 of the NLRA protects employees’ rights to engage in concerted activities, but recent shifts in NLRB policy may narrow these protections, especially concerning employer surveillance and contract provisions. For further clarification or questions, please do not hesitate to contact our [Employment Law Team](#).

### Attorney

- Tracy Armstrong

### Practice

- Employment Law